

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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U.S. Bankruptcy Court
District of New Jersey

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.¹

Chapter 11


Case No. 23-13359 (VFP)

(Jointly Administered)

**STIPULATION AND AGREED ORDER
REGARDING ENGLEWOOD'S MOTION FOR RELIEF FROM THE
STAY PURSUANT TO 11 U.S.C. § 362(D) TO CONTINUE PENDING LITIGATION**

The relief set forth on the following pages, numbered three (3) through eight (8), is
ORDERED.

DATED: August 10, 2023



Honorable Vincent F. Papalia
United States Bankruptcy Judge

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

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This Stipulation and Agreed Order (the “Stipulation”) is entered into between the above-captioned debtors and debtors in possession (collectively, the “Debtors”) and Englewood Construction, Inc. (“Englewood” and, together with the Debtors, the “Parties”), who stipulate and agree as follows.

WHEREAS, Buy Buy Baby, Inc., as tenant, and JLP-Chesapeake, LLC, as landlord, are parties to a written lease agreement dated July 14, 2022 (the “Lease”) for the lease of certain real property located at 1412 Greenbrier Parkway in Chesapeake, Virginia (the “Property”).

WHEREAS, on April 23, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of New Jersey (the “Court”), which triggered these bankruptcy proceedings (the “Bankruptcy Proceedings”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, upon the Debtors’ filing of their chapter 11 petitions, the automatic stay went into effect pursuant to section 362 of the Bankruptcy Code (the “Stay”) which, among other things, operates as a stay of “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.” 11 U.S.C. § 362(a)(1).

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WHEREAS, on August 1, 2023, Englewood filed the *Motion of Englewood Construction, Inc. for Relief from the Automatic Stay* (the “Motion”) [Docket No. 1696] seeking to proceed against Debtor Buy Buy Baby, Inc. (“Baby”), in name only, in an action to enforce a mechanic’s lien (the “State Court Action”) recorded prepetition on February 14, 2023, related to allegedly delinquent amounts due to Englewood from the owner from the Property previously leased to Baby. The Court approved the Debtors’ rejection of the Lease in the *Order (I) Authorizing (A) Rejection of Certain Unexpired Leases and (B) Abandonment of Any Personal Property, Effective as of the Rejection Date and (II) Granting Related Relief* [Docket No. 373].

WHEREAS, the Parties have agreed to allow Englewood to (a) initiate, adjudicate, liquidate, and obtain a judgment as to other non-debtor defendants in the State Court Action and (b) execute, levy, and collect upon any judgment rendered in the State Court Action from non-debtor defendants or non-debtor sources, if any, only, and not from the Debtors, their estates, their successors, or their property. Englewood acknowledges that the Debtors have not made any representations or warranties as to the likelihood or possibility of recovery against any non-debtor defendants or non-debtor sources, if any.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, AND UPON APPROVAL BY THE BANKRUPTCY COURT OF THIS STIPULATION, IT IS SO ORDERED as follows:

1. The foregoing recitals are hereby incorporated by reference into this Stipulation with the same force and effect as if set forth fully hereinafter.

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2. This Stipulation shall not become effective unless and until it is approved and entered by the Bankruptcy Court.

3. The Stay and any injunction is modified to permit Englewood to (a) initiate and prosecute the State Court Action to final judgment or disposition as to Baby and non-debtor defendants; *provided that* such modification of the Stay is conditioned upon Englewood proceeding against Baby in name only in order to satisfy the procedural statutory requirements associated with the state law underlying the State Court Action and Englewood shall not assert any direct claims as to Baby except as needed to determine Baby's present or future interest, if any, in the Property in connection with such procedural statutory requirements, and (b) execute, levy, and collect upon any judgment rendered in the State Court Action against the Property or from non-debtor defendants or non-debtor sources, if any, only, and not from the Debtors, their estates, their successors, or their property.

4. The Stay is modified solely to the extent that any amounts due in connection with defense costs, including attorneys' fees and expenses, with respect to the State Court Action and/or pursuant to a verdict, judgment, or settlement agreement in connection with the State Court Action, including any related claims for equitable relief, are paid by other non-debtor defendants or non-debtor sources, if any, and not by the Debtors, their estates, or their successors. For the avoidance of doubt, Baby does not and shall not have any obligation to provide coverage and/or defense with respect to the State Court Action.

5. The Debtors, their estates, or their successors shall not be required to fund costs associated with (a) any obligation to post any security or deposit with any non-debtor defendants

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pursuant to the terms of an applicable insurance policy, if any, or (b) any other costs of any kind, including, without limitation, attorneys' fees and expenses or amounts due for any non-debtor defendants' claims based on indemnification obligations or applicable insurance policies, if any, against the Debtors, their estates, or their successors in the State Court Action.

6. The Debtors do not stipulate, agree, represent, or warrant that they are liable for or will fund any amounts in connection with the State Court Action. Any payments made on account of claims and/or damages alleged and/or asserted in the State Court Action are subject to the terms, conditions, exclusions, and limitations contained in any applicable indemnification agreements, except that any recovery by Englewood from the non-debtor defendants or non-debtor sources shall belong to Englewood. Nothing herein (a) alters or amends the terms, conditions, exclusions, and limitations found in any applicable insurance policy or indemnification agreement, (b) creates or permits a direct right of action for Englewood against any applicable insurers or other non-debtor party, or (c) precludes or limits, in any way, any insurer's rights or ability to contest and/or litigate the existence, primacy, and/or scope of available coverage under the applicable policy.

7. Englewood agrees and acknowledges that (1) any recovery arising from the State Court Action (whether by mediation, arbitration, trial, or otherwise) with respect to the Debtors, their estates, their successors, or their property is limited to funds made available from other non-debtor defendants and non-debtor sources, if any, and not from the Debtors, their estates, their successors, or their property and (2), to the extent that amounts due from any non-debtor defendant or non-debtor source do not satisfy a judgment, settlement, or other disposition with respect to the

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State Court Action, for any reason, neither the Debtors, their estates, their successors, or their property shall satisfy nor be liable for any such unsatisfied portion, which might otherwise be considered a general unsecured claim in the Bankruptcy Cases, and Englewood shall not seek to collect on any such unsatisfied portion from the Debtors, their estates, their successors, or their property.

8. Englewood further agrees that any other claims or proofs of claim Englewood has filed in connection with the State Court Action against the Debtors, their estates, or their successors in their chapter 11 cases, if any, are, by the entry of this Stipulation, deemed disallowed. Englewood shall not be entitled to any recovery against the Debtors' or their successors' assets or their property (except to the extent that applicable indemnification obligations and/or proceeds derived therefrom constitute their property). The Debtors, their estates, their successors, and their property are hereby fully, finally, and forever released and discharged from any and all claims, debts, demands, actions, causes of actions, suits, controversies, proceedings, accounts, covenants, agreements, promises, judgments, executions, damages, attorney fees, costs, including out-of-pocket expenses, court costs, expert witness fees, etc., and any other liabilities of any nature whatsoever, whether sounding in contract, tort or otherwise, whether matured or unmatured, accrued or unaccrued, liquidated or unliquidated, absolute or contingent, known or unknown, whether now existing or that might arise hereafter, including, for the avoidance of doubt, the claims that Englewood has asserted or could have asserted against the Debtors, their estates, their successors, or their property (except as to the rights, if any, that the Debtors have in the Lease or the Property). These agreed upon terms may be reflected as such on the Court's official claims

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register. For the avoidance of doubt, Englewood is not releasing any claims it has against any non-debtor defendants or against the Property.

9. By entering into this Stipulation, neither party is waiving nor will be deemed to have waived any available claims or defenses, including at law, equity, or otherwise with respect to the State Court Action, except as otherwise provided in this Stipulation.

10. The modification of the Stay set forth herein shall have no effect as to parties that are not a party to this Stipulation, except as provided in this Stipulation, and the Stay shall remain in full force and effect with respect to such parties and their claims or causes of action, if any, against the Debtors, their estates, and their property.

11. Neither this Stipulation nor any terms contained herein shall be offered or received in evidence or in any way referred to in any legal action or administrative proceeding among or between the Parties other than as may be necessary to do the following: (a) obtain approval of or to enforce this Stipulation, (b) seek damages or injunctive relief in connection with any violation(s) of the terms of this Stipulation, or (c) inform the State Court that the Stay is being modified for the sole, limited purpose set forth herein.

12. The Debtors are authorized to take all actions necessary to effectuate the relief provided by this Stipulation.

13. Neither the Stipulation nor any negotiations and writings in connection with this Stipulation will, in any way, be construed as or deemed to be evidence of or an admission on behalf of any party regarding any claim or right that such party may have against the other party.

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14. Each of the Parties hereto represents and warrants it is duly authorized to enter into and be bound by this Stipulation.

15. This Stipulation may be executed in multiple counterparts, any of which may be transmitted by facsimile or electronic mail, and each of which will be deemed an original, but all of which together will constitute one instrument.

16. The terms and conditions of this Stipulation shall be immediately effective and enforceable upon its entry.

17. The Bankruptcy Court retains exclusive jurisdiction to resolve any dispute arising from or related to the interpretation or enforcement of this Stipulation and Agreed Order.

Dated: August 8, 2023

/s/ Michael D. Sirota

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